IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 88 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

PRABHAT TRADING CO.

Appearance:

1. INCOME TAX REFERENCE No. 88 of 1986
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred to us for our opinion in respect of assessment years 1977-78 and 1978-79 arising out of ITA Nos. 55 and 56/Ahd/1984 :-

"Whether, on the facts and in the circumstances of the case, the assessee's claim for deductions of Rs.66,583/- in the first year and Rs.18,847/- in the second year under reference was rightly accepted by the Tribunal ?"

2. On the basis of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the assessee had debited Rs.66,583/- in the first year and Rs.18,847/in the second year to the profit and loss accounts as liability for payment of wages to the labourers and claimed the same as deductible expenditure in view of the mercantile system of accounting followed by it. The ITO disallowed the assessee's claim for deduction of the said amounts on the ground that the assessee had challenged the said Act before this Court by way of a writ petition and the decision of this Court was in favour of the assessee. He further noticed that since the Government had not accepted the said decision of this Court, it had taken the matter before the Hon'ble Supreme Court where it was still pending. In this view of the matter, following his order for the assessment year 1976-77, the ITO held that these amounts were mere provisions as actual payment had not been made by the assessee. He, therefore, disallowed the assessee's claim for deduction of the said amounts.

3. In appeal, following the order of the Tribunal in the case of Associated Labour Corporation, the AAC restored the matter to the file of the ITO with a direction to decide the issue afresh after the Hon'ble Supreme Court pronounces its judgment in the matter which was pending before it. The assessee, however, carried the matter in second appeal before the Tribunal and urged that in view of the decision of the Allahabad High Court in J.K. Synthetics, 143 ITR 771, the matter need not be restored back to the file of the ITO, but the question should be decided in favour of the assessee. The Tribunal held in favour of the assessee on merits.

At the instance of the revenue, the Tribunal referred the above quoted question for our opinion.

4. We have heard Mr BB Naik, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

5. In response to a query from the Court as to what was the outcome of the appeal before the Supreme Court against the aforesaid decision of this Court on the

question of constitutional validity of the Contract Labour (Regulation and Abolition) Act, 1970, the learned counsel was not in a position to indicate the result of the litigation pending before the Supreme Court, but the learned counsel invited our attention to the order dated 21.7.1981 passed by the Tribunal in the case of Associated Labour Corporation vs. ITO for the assessment year 1976-77. By the said order, the Tribunal remanded the matter to the ITO with a direction that the ITO will modify his order, if required, in light of the decision which may be rendered by the Supreme Court in the appeal filed by the Government against the decision of the High Court.

6. We are inclined to accept the submission made by the learned counsel for the revenue that a similar direction is required to be issued in the instant case also.

7. We accordingly dispose of the reference with an observation that when the appeal is pending before the Tribunal, if the decision of the Supreme Court has not already been rendered in the above matter arising from the Contract Labour (Regulation and Abolition) Act, 1970 against the decision of this Court on the question, the Tribunal shall remand the matter to the ITO with a direction that the ITO will modify his order, if required, in light of the decision of the Supreme Court. In other words, if the decision of this Court is upheld by the Supreme Court and the appeal of the Government fails, then the decision of the ITO in making the disallowance will be correct, but if on the other hand the Government succeeds in its appeal before the Supreme Court, then the assessee will be entitled to the deduction of liability of the aforesaid amounts of Rs.66,583/- in the first year and Rs.18,847/- in the second year under reference.

8. We accordingly dispose of this reference and remand the matter to the Tribunal with the aforesaid direction and observations and accordingly decline to answer the question referred for our opinion.

(M.S. Shah, J.) (D.A. Mehta, J.)

sundar/-